

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**JOHNNY L. McGOWAN, JR. v. STATE OF TENNESSEE**

**Direct Appeal from the Circuit Court for Rutherford County**  
**Nos. F-27902 - 05      James K. Clayton, Jr., Judge**

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**No. M2007-01660-CCA-R3-CO - Filed October 31, 2007**

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Along with convictions for other offenses not pertinent in this appeal, Petitioner, Johnny L. McGowan, Jr., pled guilty to aggravated arson on January 24, 1994. He filed a "Petition for Writ of Error Coram Nobis" on June 7, 2007, alleging the discovery of new evidence, that being aggravated perjury committed by a deputy sheriff who testified to the grand jury. The trial court summarily dismissed the petition. Petitioner has appealed, and the State has filed a motion for this Court to affirm pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee. Having reviewed the motion and the record and Petitioner's response in opposition to the motion, we conclude the motion is well taken and should be granted. Accordingly, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court for Rutherford  
County Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Johnny L. McGowan, Jr., Mountain City, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth Bingham Marney, Assistant Attorney General; and William C. Whitesell, Jr., District Attorney General, for the appellee, the State of Tennessee.

**MEMORANDUM OPINION**

The record in this case includes the "Petition for Writ of Error Coram Nobis," its attachments, being an affidavit signed by Petitioner, a police report prepared by the deputy sheriff, the outside copy of the indictment for aggravated arson, the fire department report, and the judgment. Also included is the order filed by the trial court summarily dismissing the petition. Pertinent to this appeal, the documents submitted by Petitioner include information that Petitioner started a fire in a jail cell. He admits to this in his petition. Damaged property in the reports included assorted sheets and blankets and smoke damage. Petitioner contends that the information he provided

conclusively shows that the deputy sheriff committed aggravated perjury because what was burned does not constitute aggravated arson, but only the crime of reckless burning, a misdemeanor. Petitioner's argument that he is entitled to relief on appeal appears to be based upon the assertion that the available documentary evidence submitted with his petition conclusively shows that he could not have been legally convicted of aggravated arson.

Notwithstanding Petitioner's theory, a petition for writ of error coram nobis must be dismissed as untimely filed unless filed within one (1) year of the date on which the petitioner's judgment of conviction became final in the trial court, in this case, January 24, 1994. *State v. Mixon*, 983 S.W.2d 661, 670 (Tenn. 1999). The only exception to this is when due process requires a tolling of the statute of limitations. *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001). Tennessee Code Annotated section 40-26-105 provides for the remedy of writ of error coram nobis. Petitioner asserts that all of the documentary evidence attached to his petition was not discoverable at the time of trial because he had ineffective assistance of counsel. This is not cognizable under the procedure for writ of error coram nobis. In effect, Petitioner is now wanting to litigate, some thirteen years after he pled guilty to aggravated arson, that the sufficiency of the evidence would not have supported such a conviction if he had gone to trial rather than pleading guilty.

The face of the Petition shows that the statute of limitations had long since expired prior to the filing of the petition for writ of error coram nobis, and that, even in the event that the statute of limitations had not run, if all allegations were taken as true, a writ of error coram nobis would not afford Petitioner any relief.

Accordingly, the State's motion to affirm pursuant to Rule 20 of the Court of Criminal Appeals of Tennessee is granted and the judgment is affirmed.

### CONCLUSION

The judgment was rendered in this action in a proceeding before the trial court without a jury, it was not a determination of guilt, and the evidence in the record does not preponderate against the finding of the trial judge. No error of law requiring a reversal is apparent on the record. Accordingly, the judgment is affirmed pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

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THOMAS T. WOODALL, JUDGE